It should be observed that under the Women's Charter a wife may also present a petition for divorce to the court praying that her marriage may be dissolved on a similar ground, *viz.*, that her husband "has lived separately from the petitioner for a period of not less than seven years immediately preceding the presentation of the petition and is unlikely to be reconciled with her." This ground is contained in section 84(2)(g) of the Charter.

These are new grounds which came into force on 2nd June, 1967 as a result of an amendment made by the Women's Charter (Amendment) Act, 1967 (No. 9 of 1967). According to the Explanatory Note to the Bill, which preceded the amendment, they purport to follow the provisions of section 21 of the New Zealand Matrimonial Proceedings Act, 1963. Section 21(o) of that Act provides that one of the grounds for divorce in New Zealand is "that the petitioner and respondent are living apart and are unlikely to be reconciled, and have been living apart for not less than seven years".

It should be noted that the proviso to section 86(2) of the Charter, as amended on 2nd June, 1967, does not contain any provision empowering the court to dismiss a petition if, in the opinion of the court, the petitioner has been guilty of neglect, failure or refusal to make efforts to effect a reconciliation with the respondent.

It seems to me, therefore, that any such neglect, failure or refusal on the part of a petitioner is not a ground which gives the court any discretion to say that it shall not be bound to pronounce a decree of divorce. One would have thought that if it had been the intention of the legislature to give the court a discretion in the matter, steps would have been taken to provide in this proviso that the court shall not be bound to pronounce a decree of divorce and may dismiss the petition, if in the opinion of the court, the petitioner has been guilty of any neglect, failure or refusal to make efforts to effect a reconciliation with the respondent.

In the circumstances it seems to me that no such neglect, failure or refusal on the part of the petitioner is a reasonable answer or a countercharge or an allegation in defence to a petition.

Counsel for the respondent contended that such neglect, failure or refusal on the part of the petitioner would make him a party at fault who had always resisted reconciliation over a period of not less than seven years and that therefore he or she could not contend that the respondent "is unlikely to be reconciled with him".

In my opinion, no question of fault on the part of the petitioner enters into the picture at all. A ground already exists whereby a husband or a wife may pray for dissolution of marriage on the ground that the wife or husband has deserted him or her without cause over a period of at least three years preceding the presentation of the petition. The party deserting the other spouse without cause for at least three years can therefore be successfully proceeded against by the innocent party and it seems to me that the latest amendments contained in section 84(1)(e) and section 84(2)(g) are designed to put an end to marriages where the parties have been separated for at least seven years and are unlikely to be reconciled. In short, the amendment appears to have been made on the basis that, where the marriage bond has become no more than a detested shackle after the parties have been separated for not less than seven years, it is in the public interest that the tie should be severed.

Further, giving the words their ordinary grammatical meaning, I see little or no difference between the following expressions:—

(i) "she is unlikely to be reconciled with him";

(ii) "he is unlikely to be reconciled with her"; and

(iii) "they are unlikely to be reconciled".

The answer to the question of law raised in these proceedings is therefore in the negative.

Question answered in the negative.

Solicitors: *N. A. Christopher; Freddy Yin Ee Kheng.*

RE CHI LIUNG & SON LTD.; TONG CHONG FAH v. TONG LEE HWA & ORS.

[O.C.J. (Gill J.) November 8, 1967]

[K.L. — Originating Petition No. 2 of 1967]

Company Law — Private Company — Application to court when affairs conducted in a manner oppressive to one or more members — Company's power exercised through directors according to articles — Power to remove and appoint managing director — General and special meetings — Companies Act, 1965, s. 181.

A company was formed by Madam Chi Liung and her son Tong Yew Seng and incorporated in 1938 under name and style of Chi Liung & Son, Ltd. with a share capital of $500,000 divided into 500 shares of $1,000 each. Mother and son took one share each and subscribed to its articles of association.

Later by resolution pursuant to its articles the authorized capital was increased; the position at the time of these proceedings was that the amount of paid up capital was $3,000,000 made up of 3,000 shares held in unequal numbers by eleven shareholders of the family of Madam Chi Liung and descendants through her son Tong Yew Seng and his wife, the shares of those dead were represented by their estates. It was a domestic and family concern.

Madam Chi Liung had appointed the petitioner managing director of the company and by a power of attorney had empowered him to exercise all the powers

of a governing director of the company on her behalf. She had also made three wills in her last days with revocations and new appointments as governing director of the petitioner, the first respondent and one Tong King at different times. When she died in 1966 the petitioner applied for probate to establish his right which was contested by the other two, likewise by wills in their favour, and there is a probate suit now pending in court with regard to the three wills made by the deceased.

While this contest was in court there arose disputes among the interested shareholders and a scramble for power to control the company gave rise to the present petition as a shareholder of the company initiating these proceedings under provisions of section 181(1) of the Companies Act, 1965 alleging that the affairs of the company are being conducted by the respondents in a manner oppressive to himself and other shareholders as members of the company. The company was added as third respondent by order of court.

The question for consideration was whether there had been or was threatened the sort of oppression which is contemplated by section 181(1) of the Act. The acts of oppressions alleged were (1) the dismissal of petitioner from his position as managing director, (2) appointment of 1st and 2nd respondents as managing director and assistant managing director respectiveiy under circumstances which were not authorized by company's articles of association, (3) the registration of 325 of the petitioner's shares in the name of the 1st respondent.

Held: with regard to (1) and (2), the affairs of the company were being conducted contrary to articles of association and were oppressive to one or more of its members. With regard to (3) the registration of petitioner's shares in the name of 1st respondent was by itself an act of oppression. There will be orders under subsections (2) and (4) of section 181 of the Companies Act (see p. 103) and relief so as to maintain the *status quo* till determination of the probate action.

Cases referred to:—

(1) *Re H. R. Harmer Ltd.* [1958] 3 All E.R. 689; [1959] 1 W.L.R. 62.

(2) *Imperial Hydropathic Hotel Company, Blackpool* v. *Hampson* (1883), 23 Ch. D. 1.

(3) *Shuttleworth* v. *Cox Brothers & Company (Maidenhead) Ltd. & Ors.* [1927] 2 K.B. 9.

(4) *John Shaw & Sons (Salford) Ltd.* v. *Shaw* [1935] 2 K.B. 113, 134.

(5) *Automatic Self-Cleansing Filter Syndicate Co. Ltd.* v. *Cuninghame* [1906] 2 Ch. 34.

(6) *Scott* v. *Scott* [1943] 1 All E.R. 582.

(7) *Elder & Ors.* v. *Elder & Watson Ltd.* [1952] Scots Law Times, 112; [1952] S.C. 49.

(8) *Scottish Co-operative Ltd.* v. *Meyer* [1958] 3 All E.R. 66, 86.

ORIGINATING PETITION.

Tengku Rithauddeen (*Raja Abdul Aziz* with him) for the petitioner.

R. C. Hoffman for the respondents.

Cur. Adv. Vult.

Gill J.: These proceedings by way of originating petition by a shareholder of Chi Liung & Son, Ltd. have been brought under the provisions of section 181(1) of the Companies Act, 1965 which reads:—

"Any member . . . of a company . . . may apply to the court for an order under this section on the ground — (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members . . . including himself or in disregard of his or their interests as members, shareholders . . . of the company; or (b) that some act of the company has been done or is threatened or that some resolution of the members . . . or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members . . (including himself)."

The company was formed by Madam Chi Liung and her son named Tong Yew Seng and it was incorporated on the 5th day of October, 1938 with a share capital of $500,000 divided into 500 shares of $1,000 each. Each of them took one share in the company and subscribed to its articles of association. By an ordinary resolution pursuant to article 33 of the company's articles of association dated 22nd November, 1961 the authorised capital was increased to $3,000,000 by the creation of 2,500 shares of $1,000 each, and by a resolution dated 30th September, 1964 it was further increased to $20,000,000 by the creation of 17,000 shares of $1,000 each.

Tong Yew Seng had a wife named Fun Siew, five sons and two daughters, each of whom became a shareholder of the company presumably on the bounty of Madam Chi Liung or her son Tong Yew Seng. Madam Chi Liung, her son, her daughter-in-law and two of her grandsons are now dead, their shares in the company being held by their respective estates. The other six shareholders of the company are her three surviving grandsons named Tong Chong Fah (petitioner), Tong Lee Hwa (first respondent) and Tong Young Fah (second respondent), her two grand-daughters named Tong Hui Phing and Tong Ban Hui and a cousin of her grandchildren named Tong Chow Hwa. As at present the amount of the capital paid up or credited as paid up is $3,000,000 being made up of 3,000 shares held in unequal numbers by the above-mentioned eleven shareholders, the three grandsons being the major shareholders. Thus the shareholders of the company are the estate of Madam Chi Liung and her descendants or the estates of her descendants, with the exception of her daughter-in-law, who is not of the same blood but a member of the same family, so that the company may be fairly described as a domestic and family concern.

Articles 62 and 63 of the company's articles of association deal with the appointment of Chi Liung and her powers as governing director of the company. Article 73 speaks of the powers of the company in general meeting. These three articles read as follows:—

62. "The said Chi Liung shall be governing director of the company until she resigns the office or dies and whilst she retains the said office she shall have authority to exercise all the powers authorities and discretions by

these presents expressed to be vested in the directors generally and all the other directors, if any, for the time being of the company shall be under her control and shall be bound to conform to her directions in regard to the company's business."

63. "The said Chi Liung whilst she holds the office of governing director may from time to time and at any time appoint any other persons to be directors of the company and may define limit and restrict their powers and fix and determine their remuneration and duties and may at any time remove any directors howsoever appointed and may at any time convene a general meeting of the company. Every such appointment and removal must be in writing under the hand of the said Chi Liung."

73. "The company in general meeting shall have power at any time and from time to time to appoint any person as director either to fill a casual vacancy or as an addition to the board, but so that the total number of directors shall not exceed at any time the maximum number above fixed. But any director so appointed shall be subject always to the provisions of article 63 hereof (73 in the printed copies exhibited to the affidavits being obviously a misprint)."

Articles 64 and 66 provide as follows:—

64. "If the said Chi Liung dies while she holds the office of governing director she may by her will or any codicil thereto appoint any person to be governing director in her place and direct and determine what shall be the powers authorities and discretions of such governing director what his remuneration and qualification and how long he shall be entitled to hold office and in default of such direction and determination such appointee shall only have the powers of an ordinary director."

66. "If and when there is not a governing director (which event is hereinafter referred to as the termination of the original management) the other directors, if any, then in office shall forthwith convene a general meeting of the company for the purpose of electing a board of directors, and if there are no directors in office, or if they do not convene such meeting within 14 days after the termination of the original management any member may convene such meeting."

In the exercise of the powers conferred on her by article 63 of the articles of association of the company, Chi Liung appointed the petitioner to be the managing director of the company with effect from 1st May, 1961 at a remuneration of $800 a month. By a power of attorney dated 22nd December, 1965 she appointed him as a true and lawful attorney for her and in her name or otherwise with all the powers and authorities vested in her under article 62 of the articles of association of the company as governing director.

Chi Liung died testate on 2nd July, 1966. During her lifetime she made three wills. Under her first will made on 28th October, 1965 she appointed the first respondent to be the governing director of the company. By a codicil dated the 21st of May, 1966 to her second will dated the 4th day of May, 1966 she appointed the petitioner to be the governing director of the company. By two revocations dated 29th May, 1966 she purported to revoke her second will and the codicil thereto. On 6th June, 1966 she made her third will appointing one Tong King as governing director of the company.

By petition No. 75 of 1967 filed in this court, the petitioner to these proceedings applied for probate of the will and codicil under which he was appointed as executor and trustee of the will and named as the governing director in place of the deceased. His petition has been contested by the parties in whose favour the other two wills of the deceased were made, and there is now pending a probate suit in this court with regard to the three wills made by the deceased.

At an extraordinary general meeting of the company held on the 24th of March, 1967 a resolution was passed appointing the first respondent and the second respondent as managing director and assistant managing director respectively. The resolution passed further conferred on the first respondent powers equivalent to those exercisable only by the governing director as specified in article 62 of the articles of association and provided that the remuneration of the managing director and assistant managing director so appointed were to be $3,000 and $1,500 per month respectively.

In his affidavit sworn to on 13th April, 1967 filed in support of these proceedings the petitioner alleges that his appointment as managing director has never been validly terminated. He further says that the resolution at the extraordinary general meeting was passed despite his objections and the objections of two other members present that the appointments made under the resolution were invalid as being unauthorised by the articles of association of the company and that there was still pending before this court the matter relating to the validity of the will and codicil in his favour. This is the first act of oppression on which the petition is founded.

The other act of oppression on which the petition is based is in relation to the registration of 325 of the petitioner's shares in the company in the name of the first respondent in circumstances which, it is alleged, amounted to a fraud on the part of the first respondent. In this connection the petitioner has stated in his affidavit as follows.

In or about the month of October 1966 at the request of the first respondent, he agreed to transfer to the company 7 shares in Hong Fatt Finance Co. Ltd. which he was holding in trust for the company. For the purpose of such transfer he executed and delivered to the said respondent a blank transfer to cover the same containing a certificate therein by him certifying that the name of the transferee was filled in prior to his execution thereof although such name was not then inserted. The first respondent fraudulently made use of the blank transfer to transfer 325 of his shares in the company to himself.

The petitioner says further in his affidavit that by a letter dated the 7th of November, 1966

Messrs. Kok & Co. who were then the secretaries of the company informed him that they had received a letter from Messrs. K. C. Yap & Co., solicitors for the first respondent, requesting them to transfer the said 325 shares to the first respondent. By a letter dated the 7th December, 1966 the petitioner's solicitors requested Messrs. Kok & Co. to retain the instrument of transfer as it was issued in fraud.

The petitioner's affidavit goes on to say that, despite such notice and notwithstanding his objection that the transfer was made in fraud, the first respondent in his own capacity as director of the company and exercising powers in his capacity as alternate director for the second respondent and for Madam Fun Siew caused a resolution to be passed at a meeting of the board of directors of the company held on the 28th day of February, 1967 approving the transfer of the said shares and directing the secretaries to register such transfer.

As regards the petitioner's allegation that his appointment as managing director has never been validly terminated, the first respondent in his affidavit sworn on 12th May, 1967 and filed in these proceedings says that at an extraordinary general meeting of the company held on 3rd December, 1966 at which he, the petitioner and the second respondent were present, it was decided that there should be a re-organization of the management of the company. The petitioner offered his resignation from his office of managing director while he at the same time offered his resignation from the office of assistant managing director. It was unanimously decided to accept the resignations, and the two appointments were terminated with effect from 4th December, 1967. He therefore says that the petitioner's appointment as managing director was validly terminated.

As regards the alleged fraudulent transfer of 325 shares, the first respondent has set out in paragraphs 15 and 16 of his affidavit what he calls the true facts relating to this transfer. What he says is this. In the year 1963 the petitioner held 1,000 shares in the company while the remaining ten shareholders between them held 1,500 shares. As he did not consider this an equitable distribution of the shares which were intended to benefit not just the petitioner but also the other members of the family of Chi Liung, he urged upon the petitioner to arrange a redistribution of the shares. After some time it was agreed that the three brothers should have an equal number of shares and the shareholdings of his mother and two sisters should be increased. No figures were discussed at that stage, but the petitioner promised to give up a portion of his holding of 1,000 shares in order to effect a fair distribution on the basis of the agreement. Eventually in November 1963 he transferred 250 of his shares to the second respondent whose shareholding was thus brought up to 500 shares, but he failed to keep his promise to increase the shareholdings of his mother and two sisters.

The first respondent goes on to say in his affidavit that in or about September 1964 there was a bonus issue of shares which increased the petitioner's holdings to 900 shares while his shares and the second respondent's shares were increased to 600 each. Even then the petitioner failed to fulfil his promise of giving up shares for a fairer distribution. He continued to press the petitioner to fulfil his promise both before and after the death of Chi Liung. Eventually some time in October 1966 the petitioner agreed to let him have 325 shares for redistribution on the basis of their original agreement and on 20th October, 1966 he received from one Arshad bin Rani an executed transfer of the said 325 shares by the petitioner together with the relevant two share certificates. The shares transferred to him by the petitioner are for the purpose of redistribution and it is not his intention to retain all of the shares in his name.

In his affidavit sworn to on 20th May, 1967 and filed in these proceedings the petitioner says that since September 1964, when as a result of the issue of bonus shares the shareholdings of the first and second respondents became 600 shares each and his shareholding became 900 shares, he has not transferred, nor executed any transfer of, any shares in the company to the first respondent. He has denied that in October 1966 he executed a transfer of 325 shares in the company in favour of the first respondent or that he gave the said transfer to one Arshad bin Rani to be delivered to the first respondent or that the said Arshad bin Rani witnessed his signature in respect of such transfer. He has also stated that he agreed not to exercise the powers of managing director on condition that such powers be vested in and exercised by the board of directors referred to in article 66 of the articles of association of the company, but that his appointment as managing director was never validly terminated by the passing of a proper resolution and he never offered to resign.

Other affidavits have been filed in these proceedings including one by Khoo Teng Kiat, the secretary of the company, after the order which I made on 22nd July, 1967 for the company to be added as the third respondent to these proceedings. These affidavits do not carry the matter any further. The petitioner and the first respondent were cross-examined on their affidavits. The evidence which they gave under such cross-examination does not take the matter any further either. There have been allegations and counter-allegations, the chief allegation against the petitioner being that he has regarded the company as his sole absolute property.

The question which I have to consider in the

determination of these proceedings is whether there is, has been or is threatened the sort of oppression which is contemplated by section 181 (1) of the Companies Act, 1965. The word "oppressive" has been defined to mean "burdensome, harsh and wrongful" (see *Re H.R. Harmer Ltd.*[1]). The acts of oppression alleged are (1) the dismissal of the petitioner from his position as managing director, (2) the appointment of the first respondent and the second respondent as managing director and assistant managing director of the company respectively under circumstances which are not authorized by the company's articles of association and (3) the registration of 325 of the petitioner's shares in the name of the first respondent.

It will be convenient to take the first two alleged acts of oppression together, as both of them involve the question as to whether such acts are contrary to the articles of association of the company. In this connection it is to be observed that by reason of article 62 of the company's articles of association, Chi Liung as governing director had virtually dictatorial powers during her lifetime because the powers of the company in general meeting under article 73 were subject to the powers vested in her by article 63. Reading article 62 in conjunction with articles 64 and 66, it would seem clear that the situation envisaged in article 66 would arise only on Chi Liung's resignation from the office of governing director during her lifetime, or on her death intestate, or on her death testate if by her will or codicil she failed to appoint any person to be the governing director in her place.

It is common ground that Chi Liung did not resign the office of governing director during her lifetime, and that on her death there were in existence three separate wills under each of which she has appointed a person to be governing director in her place. In the event of any of her wills being admitted to probate the appointment of the person named in such will as governing director will relate back to the date of her death. In the circumstances I am of the opinion that article 66 does not apply, unless of course all the three wills are held to be invalid.

To my mind, there is a good deal of substance in the argument put forward by counsel for the petitioner that the articles must be construed in the manner in which they were construed when Chi Liung was alive and that, pending the outcome of the probate suit with regard to the wills made by Chi Liung, it is premature to say that there is no governing director at the moment. As I have said, if probate is granted in respect of any of the three wills there will be a governing director as from the date of Chi Liung's death and the power of removal will then be in the hands of the governing director named in the will which is admitted to probate.

A company whose directors are appointed for a definite period has no inherent power to remove them before the expiration of their period. If the articles of association of a company contain no power to remove directors before the expiration of their period of office, but authorise the shareholders by special resolution to alter any of the articles, there must be a separate special resolution altering the articles so as to give power to remove directors before a resolution can be passed to remove any of them (see *Imperial Hydropathic Hotel Company, Blackpool* v. *Hampson* [2] and *Shuttleworth* v. *Cox Brothers & Company (Maidenhead) Limited, & Ors.*[3]).

In *John Shaw & Sons (Salford) Ltd.* v. *Shaw* [4] Greer L.J. said:—

> "A company is an entity distinct alike from its shareholders and its directors. Some of its powers may, according to its articles, be exercised by directors, certain other powers may be reserved for the shareholders in general meeting. If powers of management are vested in the directors, they and they alone can exercise these powers. The only way in which the general body of the shareholders can control the exercise of the powers vested by the articles in the directors is by altering their articles, or, if opportunity arises under the articles, by refusing to re-elect the directors of whose actions they disapprove. They cannot themselves usurp the powers which by the articles are vested in the directors any more than the directors can usurp the powers vested by the articles in the general body of shareholders."

In the present case the power to remove a director is contained in article 63. It seems clear from the authorities that this power cannot be usurped by a resolution passed by a simple majority at a general meeting (see *Automatic Self-Cleansing Filter Syndicate Company, Limited* v. *Cuninghame* [5] and *Scott* v. *Scott* [6]). There is no provision in the Companies Act, 1965 either that a general meeting can usurp the powers contained in the articles of association. Section 31(1) of the Act, however, provides that, subject to the provisions of the Act and to the conditions contained in the memorandum, a company may by special resolution alter or add to its articles. A special resolution is defined in section 152(1) of the Act as a resolution which has been passed by a majority of not less than three-fourths of such members as being entitled so to do vote in person or, where proxies are allowed, by proxy, at a general meeting of which not less than 21 days' notice specifying the intention to propose the resolution as a special resolution has been duly given.

It was contended on behalf of the respondents that, if the company is carrying on business *ultra vires* its articles of association, the petitioner must bring an action. In my judgment, action is not necessary in view of the remedy available under section 181(1) of the Companies Act. If the company is doing something which is *ultra vires* its powers, then there is oppression because it deprives the minority of shareholders of their rights as members of the company to

have its affairs conducted in accordance with its articles of association (see *Re H. R. Harmer Ltd.*[1]).

It has also been contended on behalf of the respondents that there has been no oppression within the meaning of section 181(1) of the Companies Act, 1965, and that if there has been any oppression at all, it has not been an oppression of the petitioner as a shareholder. It has been argued that the position here is exactly the same as in the case of *Elder & Ors.* v. *Elder & Watson Ltd.*[7] In that case a petition at the instance of five shareholders disclosed differences of opinion between the first-named petitioner who was a director and a fellow director, removal or exclusion from office of the first and second-named petitioners as directors, forced retirement or dismissal from employment of the first and second-named petitioners as secretary and factory manager respectively, and rejection of an offer of the same petitioners to sell their shareholdings to the board of directors. Upon these facts the petitioners rested their case. It was held that three of the petitioners had suffered no apparent prejudice or "oppression", and that so far as the first and second-named petitioners were concerned any oppression which they might have suffered had been suffered by them as directors and officers of the company and not in their character as members thereof as required by section 210 of the Companies Act, 1948.

It is obvious that the facts in this case are not the same as those in the case on which the respondents rely entirely. Here there has been oppression of the petitioner both as a member of the company and as director. It was held in *Re H. R. Harmer Ltd.*[1] that once it was shown that the acts complained of were oppressive to the petitioners as members of the company, it was irrelevant that the petitioners were also directors, for oppressed members who were also directors were not, by virtue of holding such office, disqualified from obtaining relief.

As regards the registration of 325 of the petitioner's shares in the name of the first respondent, the first respondent has admitted that these shares were not meant for him. If the whole object was to redistribute these shares and allot them to some other members of the company, why was it necessary to have them registered in his name? The answer would appear to be that he wished to increase his shareholdings so as to give himself increased voting power. The petitioner had protested against their registration. The first respondent was aware of the protest, which meant that the others present at the general meeting were also aware of it. In those circumstances, to say the least, the registration of the transfers was wrongful. In *Scottish Co-operative Ltd.* v. *Meyer*[8] Lord Keith of Avonholm said:—

> "Oppression under section 210 may take various forms. It suggests, to my mind, as I said in *Elder* v. *Elder & Watson*,[7] a lack of probity and fair dealing in the affairs of a company to the prejudice of some portion of its members. The section introduces a wide power to the court to deal with such a situation in an equitable manner which it did not have in the case of a company prior to the passing of the Act of 1948."

Article 63 is the only article which permits the appointment of a managing director. Under that article the appointment of managing director and assistant managing director can only be made by a governing director. For the reasons I have already stated, article 66 does not apply. Article 74 is merely permissive and article 83 has no relevance to these proceedings. The general meeting therefore had no power by its resolution passed on 24th March, 1967 by a simple majority to appoint the first respondent and the second respondent as managing director and assistant managing director respectively. I have already said that the registration of the petitioner's 325 shares in the name of the first respondent by itself was an act of oppression. In considering this petition I have to consider the cumulative effect of what has happened and not to consider each act of oppression in isolation. Looking at the circumstances as a whole, I do not see how I can resist the conclusion that there has been a lack of probity and fair dealing in the affairs of the company to the prejudice of at least some members of the company. I have therefore come to the conclusion that the affairs of the company are being conducted in a manner oppressive to one or more of its members.

Jenkins L.J. said in *Re H. R. Harmer Ltd.*[1] in the opening words of his judgment that it was a truly lamentable litigation. Those words of the learned Lord Justice are equally true of the litigation. It is regrettable that the descendants of Madam Chi Liung for whose benefit she built up the company have started a scramble for power so soon after her death when that was the sort of thing which she must have had in mind when she gave herself the power to appoint a governing director after her death. The petitioner has been accused of running the business of the company as if it belonged to him. The transfer of 250 shares by him for redistribution amongst the other members of the company in 1963 was certainly not the act of a person who was doing everything for himself. As I have already said, Madam Chi Liung had dictatorial powers. If she was a dictator, she was certainly a benevolent dictator. That she was not an autocrat is borne by the fact that under the articles of association she allowed herself a remuneration of only $100 a month and on the date of her death she held only 30 shares in the company. The petitioner obviously carried out the directions issued by her as governing director and the fact that she appointed him as managing director and executed a power of attorney in his

favour would seem to indicate that she had complete trust in him. If the other members of the company are not happy with the articles of association of the company, the only solution would appear to be for them to take steps to have them altered or amended. As I have already stated, articles 62 and 63 of the company can be altered or amended by a special resolution.

One of the prayers in the petition is that an independent person be appointed as a manager of the company. I have given this matter very careful thought and have come to the conclusion that it may not be in the interests of everybody concerned to have a complete stranger introduced into the management of the company. After all, what is required to be done for the present is to find a method whereby the affairs of the company can be managed as before pending the result of the probate action. It is common ground that the petitioner agreed at the general meeting on 3rd December, 1966 not to exercise the powers of managing director and to leave them in the hands of the directors under article 82 of the articles of association. That would appear to me to be the only protem solution of the problem, the object being to maintain as far as possible the *status quo* as on the date of death of Chi Liung. In the circumstances I will make the orders as prayed for in the petition, appointing the petitioner at the same time as manager of the company at his former remuneration of $800 a month. I must repeat that, pending the result of the probate action, that *status quo* must be maintained and the directors must refrain from embarking on any major matters of policy or sale of the assets of the company.

The orders which I make under sub-sections (2) and (4) of section 181 of the Companies Act, 1965 are as follows:—

(a) that the resolution passed at the extraordinary general meeting on the 24th day of March, 1967 appointing the respondents, Tong Lee Hwa and Tong Young Fah, as managing director and assistant managing director respectively be and is hereby cancelled;

(b) that an injunction be and is hereby issued restraining the said Tong Lee Hwa and Tong Young Fah from acting as such managing director and assistant managing director respectively;

(c) that, pending the decision of the suit in this court between the petitioner and the first respondent with regard to the transfer in respect of the 325 shares, the registration of the transfer of the 325 shares purported to have been made by the petitioner to the first respondent be deleted from the register of shareholders;

(d) that, pending the decision of this court with regard to probate proceedings in respect of the wills made by the deceased Chi Liung, the company be managed in the manner it was managed on the day immediately prior to the death of the deceased and that for this purpose the petitioner be and is hereby appointed as manager at a salary of $800 a month;

(e) that the duties of the manager hereby appointed be restricted to collecting the income of the company and paying all salaries of the employees of the company and meeting all expenses in the day to day management of the company; and

(f) that the directors do refrain from embarking on any major policy with regard to the management of the company and that they do refrain from selling any of the assets of the company.

There will be liberty to the parties to apply.

In all the circumstances of the case the petitioner and the first two respondents will have their taxed costs out of the assets of the company.

Order accordingly.

Solicitors: *Rithauddeen & Aziz; Allen & Gledhill.*

RE RENGASAMY PILLAI; *EX PARTE* THE COMPTROLLER OF INCOME TAX, KUALA LUMPUR

[O.Bk.J. (Chang Min Tat J.) November 11, 1967]

[Penang — In Bankruptcy No. 76 of 1967]

Bankruptcy — Notice — Excessive demand and its consequence upon validity of notice — Bankruptcy Act, 1967, s. 3(2) — Form of bankruptcy notice in Bankruptcy Rules, 1897 — Requirements of.

Courts of Judicature Act, 1964, s. 7(1) — Interpretation Act, 1967, s. 28.

The Comptroller of Income Tax having obtained a judgment against a debtor took out a bankruptcy notice in the prescribed form demanding payment of $54,286.68 upon penalty of an act of bankruptcy. The particulars of the sum due arising out of the debtor's tax position were set out in the notice.

Within 7 days of receipt of notice the debtor disputed the validity of the notice and sought to set aside the notice alleging: (1) the judgment had been varied by consent and could not stand, and (2) the notice demanded payment of a sum in excess of what was actually due.

The first ground alleged was not pursued at the hearing and it was without merit.

The second ground disputing the validity of the notice was that laid down in the proviso to section 3(2) of the Bankruptcy Ordinance, 1959, now repealed and re-enacted in section 3(2) Bankruptcy Act, 1967, whereby an excessive demand would render the bankruptcy notice invalid.

Some technical objections were taken by the debtor